

Mahant Shreo Nath

Vs

Choudhry Ranbir Singh

Civil Appeal No 1201 of 1969

(V. Bhargava, J. C. Shah JJ)

14.08.1970

JUDGMENT

SHAH, J. -

1. In the "mid-term election" held in May 1968, Shreo Nath, Chaudhri, Ranbir Singh and Balwant Singh were the contestants for a seat in the Haryana Legislative Assembly. The date of polling of votes was May 14, 1968. Chaudhry Ranbir Singh polled 18,751 votes, Shero Nath polled 17,025 votes and Balwant Singh polled only 335 votes. The respondent Chaudhry Ranbir Singh was declared elected.

2. Shreo Nath - who will hereinafter be called 'the appellant' - filed petition in the High Court of Punjab and Haryana to set aside the election on the grounds, inter alia, that Chaudhry Ranbir Singh - hereinafter called 'the respondent' - and his agents had in the course of the election campaign committed corrupt practices defined in Section 123(2), (4) (5) and (6) of the representation of the People Act, 1951. The High Court dismissed the petition. The appellant appeal to this Court under Section 116-A of the Representation of the People Act, 1951.

3. The principal allegations made in the petition were :

(1) that the respondent employed for use in his election campaign a three-wheeled motor-vehicle No. PNR-3414 popularly known as 'TEMPO'. This vehicle was used for transporting voters on the date of polling from their fields to the polling booths in the village Pakasma. The vehicle was owned and driven by one Om Prakash at the relevant time [vide paragraph 9(A)(f)(i)] and the respondent paid Om Prakash "Rs. 1,800/- or 1,900/-". This amount was not included in the election expenses of the respondent furnished under Section 77 of the Act. If included, the total expenditure incurred by the respondent would have exceeded the amount permissible under the Act : Paragraph 9(f)(v);

(2) that the respondent and his agents threatened certain voters with "dire consequences if they did not vote for" the respondent at the election : vide Paragraph 9(B)(a)(i)(2). (No details of this alleged corrupt practice need be set out because the finding against the appellant recorded by the High Court has not been challenged before us in this appeal);

(3) that the respondent and his supporters "exercised undue influence by directly interfering with the free exercise of the electoral rights of Harijan voters". They

issued a false appeal in the name of one Chand Ram - leader of the Harijan. Leaflets were printed at the instance of the respondent and were widely distributed in the constituency. Paragraph 9(B)(c)(3) and (5). By publishing the leaflet the respondent committed a corrupt practice as defined in Section 123(4) of the Act in that the leaflet contained a false appeal in the name of Chand Ram who had never authorised the issue of such an appeal to vote for the respondent. In the leaflet, it was stated that Chand Ram held the opinion that the appellant was a member of the Samyukt Dal and that the - he appellant - had committed "atrocities on poor Harijans";

(4) that the respondent engaged certain persons called "Bhajniks". One of the parties of Bhajniks headed by Jianand was employed for the period April 18, 1968 to May 13, 1968, and the respondent paid him Rs. 2,400/- at the rate of Rs. 100/- per day, but a receipt was taken from Jianand for Rs. 300/- only. If the true amount paid Jianand was taken into account and added to the amount of Rs. 3,959-03 disclosed in the statement of election expenses filed by the respondent, the total expenditure incurred would have exceeded the permissible limit under the Act.

These allegations constitution corrupt practices and infraction of the law were denied by the respondent. The High Court substantially upheld the contentions of the respondent.

4. A plea in an election petition that a candidate or his election agent of any person with his consent has committed a corrupt practice raises a grave charge, proof of which results in disqualification from taking part in elections for six years. The charge in its very nature must be established by clear and cogent evidence by those who seek to prove it. The Court does not hold such a charge proved merely on preponderance of probability : the Court requires that the conduct attributed to the offender is proved by evidence which establishes it beyond reasonable doubt.

5. The first charge related to the use of the motor-vehicle No. PNR-3414 for transporting voters to and from the polling booths by Om Prakash. In the petition, besides Om Prakash names of six persons were set out, who it was claimed were witnesses to the use of the vehicle on the date of polling. Out of these Om Prakash, Ram Singh, Kundan and Chhotu were examined as witnesses. Om Prakash stated that 'Tempo' vehicle was taken on hire at the rate of Rs. 90/- per day by the respondent for use between April 17, 1968 to May 14, 1968; that he - the witness - went to village Pakasma on the day of polling to transport voters to the polling booths; that he transported the electors from their fields and threshing floors; and that he was paid "Rs. 1,800/- to 1,900/-" by the respondent. The witness admitted that the road permit for the vehicle was for Rohtak to Kaloi only and the permit did not include the village Pakasma; that he maintained no "log book for the vehicle"; that he gave no receipt for the amount paid to him; that he maintained an account of the passenger-tax, but he did not produce the same. It appears that for certain infractions of the Motor Vehicles Act in respect of the motor-vehicle No. PNR-3114 the driver of the vehicle was prosecuted. It is found from the record that the vehicle was registered in the name of one Rameshwar and since January 8, 1965, no change in the ownership of the vehicle was recorded. Amar Singh Constable produced the record relating to the commission of an offence on May 7, 1968 in respect of vehicle No. PNR-3414. In that case two persons Surjan Singh son of Prakash driver of the vehicle, and Rameshwar, the owner, were prosecuted for the breach of the Motor Vehicles Act.

6. Witness ram Singh, P.W. 14 who was examined to support the case of the appellant claimed that on the date of the polling he was at his threshing floor and he went to "poll his vote in scooter driven by Om Prakash." Kundan P.W. 15 and Chhotu, P.W. 16 gave similar testimony.

7. Om Prakash is not a reliable witness. He did not hold a permit for plying the vehicle in the village Pakasma, he maintained no accounts in support of the contract set up by him. He did not pass any receipt for the payment made to him, and his name was not even entered in the records maintained under the Motor vehicles Act. The High Court also referred to certain discrepancies between the testimony of ram Singh, Kundan and Chhotu. If the testimony of Om Prakash is disbelieved, as it must in view of the infirmities, it is difficult to accepted the testimony of witnesses ram Singh, Kundan and Chhotu who admitted that they gave no information to any one that they were brought to the polling station in the vehicle driven by Om Prakash and that they had paid no charges in respect of it. We agree with the view of the High Court that it was not proved that the respondent had hired or procured a vehicle for the use of electors to and from the poling station on the date of polling.

8. Counsel for the appellant then contended that the respondent had employed Bhajnik parties for election propaganda and had entered only a part of the amount spent by him. It is not disputed that the respondent had employed Bhajnik parties for election propaganda among the voters. These were the parties of Ramji Lal, Sobha Chand, net Ram and Jianand. The appellant alleged that three more parties were also employed but that plea is not made the subject-matter of any charge. It was the case of the respondent that Ramji Lal's party was employed for 18 days at the rate of Rs. 15/- per day and Rs. 270/- were paid to it; Sobha Chand's party was employed for 12 days at the rate of Rs. 20/- per day and Rs. 240/- were paid to it; Net Rams' party was employed for 14 days at the rate of Rs. 20/- per day and Rs. 280/- were paid to it; and Rs. 30/- per day and Rs. 300/- were paid to it. Amounts paid to the four Bhajnik parties were disclosed in the statement of account together with the vouchers, lodged under Section 78 of the Representation of the People Act, 1951. The appellant did to allege that Ramji Lal, Sobha Chand and Net Ram were paid amounts exceeding those mentioned in the receipts executed by them. He concentrated his attack upon the remuneration paid to Jianand. His case is that Jianand and this party were employed as Bhajniks at the rate of Rs. 100/- per day for the period April 18, 1968 to May 13, 1968. In support of his case the appellant led evidence to prove that Jianand was a popular Bhajnik, that his services were in great demand not only in the Haryana region, but also in the adjacent regions of Punjab, U.P. and Rajasthan, and that Jianand used to be employed in wedding parties for giving performances at the rate of Rs. 100/- per day. It as also contended that jianand was paid at the rate of Rs. 63 - 80 for 25 minutes by the All India Radio for singing devotional songs related over the All India Radio. It was urged that a popular artist who as contended by the appellant and other had entered into contracts with others between the period April 18, 1968 and May 13, 1968 to perform as Bhajnik at the rate of Rs. 100/- per performance beside a half share in the Inams would not abandon those contracts and work for the respondent at the rate of Rs. 30/- per day for a period of 10 days only. Counsel for the appellant urged that the testimony of Jianand that he was paid Rs. 2,400/- was strongly supported by probability of the case.

9. One Ram Singh was examined to proved that he had entered into a contract some time in he month of March 1968 with Jianand employing the latter and his party for three days on a total remuneration of Rs. 300/- and a share in the Inams and that the contract was cancelled by Jianand by a registered letter, dated April 10, 1968. Hari Ram was also examined to prove that he had entered into a contract employing Jianand for three performance in the end of May, 1968 for Rs. 325/- and a share in the Inams and that this contract was also cancelled.

10. The High Court believed the testimony of Ram Singh and Hari Ram. The High Court held that Jianand had agreed to sing Bhajans in Barat parties at the residence of Ram Singh and Hari Ram in the last week of April and in the first week of May, 1968, but those contracts were cancelled by

jianand by letters, dated April 10, 1968. There are certain discrepancies in the oral testimony of witnesses and the record in writing. The story that there was cancellation of the contracts by registered letters, especially of the contract with Ram Singh, is open to doubt especially because of the suspicious appearance of the registration envelope produced in support of that case. But we still do not disagree with the view of the High Court on a matter of appreciation of evidence of Jianand and the other contracting parties, viz. Hari Ram and Ram Singh.

11. It is common ground that no formal contract was executed for employment of Jianand in the election propaganda. Jianand has executed a receipt for Rs. 300/-. His story that he signed the receipt without reading it is difficult of acceptance. Jianand maintains no accounts of his earning. A bare perusal of his testimony shows that he made contradictory statements in attempting to "explain away the recitals in the receipts". When asked whether he was in the habit of signing papers without reading them, jianand stated that "it was not so". He admitted that he was told that the receipt was for Rs. 300/-. He also admitted that all the Bhajniks were present when he executed the receipt and that all the other Bhajniks executed receipts on that very day, that is "on May 11 or 12, 1968". But the receipts passed in favour of the other Bhajniks do not support the case of Jianand. The High Courts had carefully analysed the evidence and has observed :

"There is no evidence barring the statement of Jianand that his engagement was from the 18th of April to the 11th of May, 1968, and at Rs. 100/- per day; and Jianand's statement comes into direct conflict with the receipt issued by him. He did state that for the engagements in marriages, his charges are Rs. 100/- per day. He gets documents executed. There is no proper explanation why he would pass a document for his engagement at Rs. 30/-, a document which will form part of public record. Not only this, there is no evidence that the Bhajan Party of Jianand consisted of four persons including him. x x x x It is also interesting to note that Jianand was vehement in denying that he had any connection with any political party."

12. Counsel for the appellant contended that there was no reason why Jianand would reduce his charges for singing to Rs. 30/- per day when his normal remuneration for employment of his party to participate in any performance was Rs. 100/- per day. Counsel said that the respondent was not intimately acquainted with Jianand and that he had accepted the demand made by Jianand and there had been no negotiations in that behalf. But the recitals in the letter cancelling the contract with Ram Singh - Ext. P.W. 20/2, dated April 10, 1968 - furnish strong indication of the reason why Jianand was willing to work for a comparatively small remuneration. Ram Singh was informed by that letter :

"I had agreed to work for you, being a Congress Bhajnik, I am being prevailed upon to do propaganda work here. I therefore hereby inform you in time that I shall not be able to reach your place. I hope you will not take it ill. I am returning to you by money order the earnest money received by me. This will reach you in due course."

The agents of the respondent may very probably have persuaded Jianand to forego the benefit of the two contracts and to accept payment at the rate of Rs. 30/- per day. Political sympathy of Jianand was always with the Congress party. He was working as a "Congress Bhajnik" in the earlier elections and he had done propaganda for the Congress candidates. There is nothing surprising in a professional singer reducing his usual charges for participating in an election campaign to further the prospects of a candidate of his party and thereby to ensure the patronage of the party. The High Court was of the view that there was no convincing evidence that for a longer engagement in

election work, the rates of Jianand would be the same as in the case of marriage parties. We do not think that having regard to the circumstances that inference is not justifiable. The second contention raised by the appellant must also fail.

13. The appellant contends that printing of a leaflet, Ext. P.W. 7/1 was procured by the respondent or his agents and that the leaflet was widely circulated by them. The leaflet does not bear the name of the printer or the publisher. It recites :

"Dear elders and brothers,

You are aware that I have left the Congress Party and am contesting election as an independent candidate from two constituencies and for this it was necessary to secure the co-operation of the persons who are contesting election against the Congress. Therefore, I attended one of two meetings with a view to deliver speeches in favour of Mahant Shreo Nath. My indigent brothers come to me every day and they tell me that I have gone astray from the right course. But the reason for which I have thought it necessary to contest the election is that I may be able to render some service to you on my successful elections as a member of the Legislative Assembly. I know from the core of my heart and conscience the extent of inconvenience suffered by the Harijans during the regime of the United Front Government lasting for about eight months in which Bawa shreo Nath was a prominent Minister. How much the poor Harijans had to suffer and in what a manner and with what force they were subjected to atrocities in the Bahadurgarh Constituency ? The election of my constituency has concluded and one election will be over on the 14th. Now I do not stand in need of these members of the United Front who have been torturing the poor people. Therefore I request you to act in accordance with the instructions of Babu Jagjiwan Ram Ji, the ruler of the hearts of the poor people, and give your valuable votes to Chaudhri Ranbir Singh Ji (Kaloji Constituency) who, along with his father Chaudhri Matu Ram, has throughout his life been fighting a battle against the evil practice of untouchability and the caste system.

# Your faithfully, Chand Ram, Formerly Deputy Chief Minister, Haryana.###

The leaflet purports to bear the signature of Chand ram who is a leader of the Harijans in Haryana. There is no evidence that Chand Ram had authorised publication of the leaflet. Chand Ram deposed that he was contesting the elections from two constituencies of Rohtak and Babain; that he lost in the Rohtak constituency but was elected from the Babain constituency; and that he had not authorised the printing of the leaflet and the contents thereof were untrue. The case of the appellant was that the respondent got printed this leaflet in the night of May 13, 1968, and distributed it in the early morning of the polling day. It was claimed by the appellant that the leaflet was printed and published at the Tehreek Printing Press owned by Gian Singh a relation of the respondent, but there is no reliable evidence in support of that claim.

14. It was conceded that there was no evidence that the leaflet was printed at the instance of the respondent or by his election agents or by any person with his consent. It was however contended that the leaflet was published by the respondent or his agents or with his consent. The High Court held that there was nothing in the leaflet which suggested that it was intended to "bring pressure upon the free exercise of electoral rights" by the Harijan electors and that it could not be held, assuming all the allegations of the appellant regarding the leaflet to be correct that its publication

was hit by Section 123(2) of the Act. The Court also held that there was no convincing evidence on the respondent himself or by his agents or any other person with his consent. The Court held that the evidence was "wholly worthless".

15. The case of the appellant as disclosed in the evidence was that sometime about the mid-night immediately preceding the polling date, certain persons were called to the residence of the respondent and they were asked to distribute the leaflets, that the persons assembled at the respondent's residence formed themselves into two parties - the respondent, Jamadar Parbhe Ram of Kaloi and Bhalle Ram of Pakasma formed one party; and Partap Singh (son of the respondent), Ramdhari, Attar Singh Khatak, Harkesh son of Tek ram formed the other party, and that the first party distributed the leaflets in villages Roorki, Kaloi, Bahamanwas, Basantpur, Dassiya and Pakasma, and the second party headed by Partap Singh distributed the leaflets in villages Karontha, Simli, Karor, Pehrawar, Kanhali, Bhalot and Baliana.

16. We may deal with the case of the appellant relating to the two parties moving from village to village in the night preceding the polling day. The appellant claimed that Jai Karan son of Teka of village Dassiya, Mallu son of Mai Dial of Basantpur and Santokh of village Kaloi were contacted at about mid-night and the leaflets were handed over to them. The respondent's party also handed over the leaflets to the polling agents residing in these villages with instructions to distribute them in village Bahamanwas and Basantpur. Consequently Pirthi, the polling agent of the respondent distributed those leaflets in village Kaloi, Laxmi Narain a supporter, worker and agent of the respondent distributed those leaflets in village Bahamanwas and Basantpur and Giani Ram another worker and agent of the respondent distributed those leaflets in village Dassiya and neighbouring villages. Ghasi ram son of Tuhi Ram polling agent of the respondent distributed those leaflets in village Roorki in the early morning of May 14, 1968. Those leaflets, it was claimed, were freely distributed near the polling camps among the Harijan voters when they came to cast their votes. Jai Karan of village Dassiya and Santokh of village Kaloi though summoned were not examined as witnesses. Mallu deposed that Duli Chand and Prabhe of Pakasma had given him the leaflets and at that time the respondent was with them. Parbhe Ram was not examined as a witness to corroborate the testimony of Mallu. Bhalle Ram who it was alleged accompanied the respondent in the expedition deposed that a jeep was sent to fetch him from his house at about mid-night, and he was told that the respondent had sent for him, that he went to the house of the respondent, that at the residence of the respondent Ram Dhari Balmiki, Attar Singh Khatak, Partap Singh (son of the respondent), Jamadar Parbhe ram were present, that he was told that Chand Ram was busy in the elections and he (Chand ram) Had sent the leaflets after getting them printed and that the witness Bhalle Ram Should distribute those leaflets in the Harijan villages and also ask the Harijan villages and also ask the Harijans to vote for the respondent; and that thereafter the respondent made two parties for distribution of those leaflets, that the witnesses Bhalle Ram, Jamadar prabhe ram and the respondent formed one party, and that the leaflets were distributed in different villages. The witness further deposed that after 7 of 8 days of the date of polling he had informed Chand Ram that he had carried out his message and that he had succeeded in getting the respondent elected. The story of this witness was disbelieved by the High Court. It is not pretended that Bhalle Ram was a worker for the respondent of that the respondent had any reason to take Bhalle Ram in his confidence. Bhalle Ram is a Harijan and he regarded Chand Ram as his leader. It is highly improbable that the respondent who desired to distribute the leaflets, which he must have known to be fabricated and containing false averments, would avail himself of the services of Bhalle Ram who was a stranger to him. The conduct of Bhalle Ram also appears to be highly improbable. If he was asked by the respondent to distribute the leaflets, which he says he did, and which contained statements relating to the change of political allegiance by Chand Ram, he - Bhalle Ram - would have made some

enquiry as to how Chand Ram came to change his allegations at the last moment, especially when Chand Ram was actually standing for election against a Congress candidate. But no such enquiry was made. In our view, the High Court was right in holding that Bhalke Ram was a "false witness". Bhalke Ram was a supporter of Chand Ram and the sympathies of Chand Ram lay with the appellant. He has been persuaded to support the case of the appellant by posing that he had been called by the respondent on the night previous to the day of polling and that he had participated in the distribution of the leaflets.

17. The story that the respondent himself moved till the morning of the polling day from village to village personally distributing the leaflets or contacting his workers for distributing the leaflets is unbelievable. The respondent had a large number of workers and agents who would have been deputed to go about distributing or handing over the leaflets to his agents of the respondent for distribution.

18. Among the other witnesses who were cited were Prithi, Laxmi Narain, Giani Ram and Ghasi Ram. Prithi, Laxmi Narain and Ghasi Ram though summoned were not examined, and only Giani Ram and Harkesh were examined. Giani Ram stated that he had received for distribution the leaflets at 4 a.m. on May 14 from the respondent. Giani Ram, it may be noted, is a Brahmin. It is difficult to believe that he would undertake to distribute the leaflets among the Harijans or that the respondent would entrust that work to him. Giani Ram is worker of the Rohtak Congress Committee. It appears that he did not support the candidature of the respondent. At one of the election meetings he wanted to speak opposing the candidature of the respondent, but he was not permitted to do so. Harkesh stated that he had seen the leaflet at the house of the respondent, that he was called by the respondent at about mid-night of May 13, 1968 not he pretext that Chand Ram had called him. But at the house of the respondent he found Bhalke Ram, Parbhe Ram, Attar Singh Khatak, Ram Dhari Balmiki, but he did not see Chand Ram. He asked Bhalke Ram why he was called. Bhalke Ram told him that there was a message from Chand Ram and handed over the leaflets to him. He then stated that the respondent gave him the leaflets for distribution.

19. The story that the party of Partap Singh (son of the respondent) moved from place to place and that leaflets were distributed by them also is also unreliable. In support of this case witnesses Giani Ram, Harkesh, Munshi, Ram Chander, Om Prakash and Narinder Singh were examined. Giani Ram stated that the along with Attar Singh Khatak, Ram Dhari and Partap Singh (son of the respondent) went to Karontha, Simli, Miana, Karor, Karo and Baliana and distributed the leaflets. In cross-examination it was elicited that he had a dispute with the supporters of the respondent and that a report was lodged with the police in that behalf. The story that he was called from his house on the night of May 13, 1968, and that he participated in the distribution of the offending leaflets is not supported by any reliable evidence, and has, in our judgment, been rightly disbelieved. On a consideration of the evidence of Munshi the High Court held that he was a "thoroughly unreliable witness". About the witness Ram Chander the High Court observed that it could not place "any reliance on his testimony". About the witness Om Prakash and Narinder Singh the High Court observed that "the less said about these two statements, the better". We have been taken through the evidence of those witnesses and we see no reason to disagree with the appreciation of the evidence by the High Court. The story deposed by the witnesses is highly improbable : their statements are inconsistent and are not supported by any independent witnesses who could have been examined.

20. In our judgment, the High Court was right in disbelieving the case of the appellant that the respondent either personally or through his agents had distributed the leaflet Ex. P.W. 7/1 as alleged by the appellant.

21. All the contentions raised by the appellant fail. The appeal is dismissed with costs.

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